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10/033,216	12/26/2001	Robert T. Long SR.	1547520/86600	7380

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EXAMINER
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KATCHEVES, BASIL S

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3635

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/033,216  
Filing Date: December 26, 2001  
Appellant(s): LONG, ROBERT T.

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Emily E. Harris  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 9/10/09 appealing from the Office action  
mailed 7/11/08

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 25-28, 37 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,138,981 to Keith et al.**

Regarding claims 25 and 37, Keith discloses a wall panel comprised of two concrete layers (fig. 2: 86, 88) and an insulating layer (84), a plurality of elongated connectors (fig. 3: 106), having bodies extending from between concrete layers and having ends completely embedded and surrounded by concrete (106), the body has elongated portions (fig. 3: see front and back longitudinal sides which are perpendicular to upper web 92 and bottom web 22) which extend longitudinally for the length of the body, and the longitudinal portions are laterally spaced apart by a web (web 92 thickness extends the length of the connector) having a thickness equal or less and

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running the length of the body and each connector having two anchorage ends (see ends) inherently capable of transferring forces throughout the wall.

Regarding claim 26, Keith discloses the wall as being composite, and the inherent ability of the connector to transfer forces.

Regarding claim 27, Keith discloses a perpendicular lip (fig. 3: unmarked lips of connector 106 shown aligned with lips 32) centrally located. Also, regarding the premolded limitation, even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.

Regarding claim 28, Keith discloses the use of fiber reinforced polymer (column 8, lines 45-54) for the connector.

**Claims 29-34, 36 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,138,981 to Keith et al.**

Regarding claims 29, 30 34, and 38, Keith discloses a wall panel comprised of two concrete layers (fig. 2: 86, 88) and an insulating layer (84), a plurality of elongated connectors (fig. 3), having bodies extending from between concrete layers, the body has elongated portions (fig. 1D: top side 12 and bottom side opposite to top 12) which extend longitudinally for the length of the body, and the longitudinal portions are laterally

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spaced apart by a web (thickness 18) having a thickness equal or less and running the length of the body and each connector having two anchorage ends (see ends) inherently capable of transferring forces throughout the wall.

Regarding claim 31, Keith discloses the wall as being composite, and the inherent ability of the connector to transfer forces.

Regarding claim 32, Keith discloses a perpendicular lip (30) centrally located.

Regarding claims 28 and 33, Keith discloses the use of fiber reinforced polymer (column 8, lines 45-54) for the connector.

Regarding claim 36, Keith discloses an anchoring surface formed transversely across the longitudinal portions (fig. 1D: see both the plurality of anchoring notches 53, and the component 26 which passes through both sides).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S.**

**Patent No. 6,138,981 to Keith et al.**

Regarding claim 35 Keith does not disclose anchoring surfaces formed transversely across the longitudinal direction. However, Keith discloses an anchoring

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surface formed transversely across the longitudinal portions (fig. 1D: see both the plurality of anchoring notches 53, and the component 26 which passes through both sides) of connector 18. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify connector 106 by adding the anchoring surfaces disclosed by connector 18 in order to better secure the connector 106 within the wall.

#### **(10) Response to Argument**

The applicant argues that the connector 92 of Keith does not disclose the claimed longitudinal portions. However, the applicant should note that the claimed structural limitations are merely claimed as "longitudinal". This is being construed broadly and any part of Keith which has a length may be construed as being longitudinal. The above action states the prior art has elongated portions which are the lengths at the top and bottom sides (the wide flats), and these lengths are perpendicular to the webs (the narrow flats at the sides connecting the top and bottom wide flats) as shown in fig. 3: 92 the transverse flats which extend between the sides and are of thinner or equal thickness, as seen in the drawing. Component 22 points to another embodiment (in figure 1A) which also teaches these same limitations as 1A teaches elongated top and bottom sides and a web (where 22 points) of thinner thickness (the web is the thickness). This is also shown in figure 1B and 1D where the top and bottom flat elongated portions are separated by a web (52 in figure 1B and notch not labeled in figure 1D) of thinner thickness. Again, the applicant should note that with no structural

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limitations beyond being "elongated" and separated by a "web" of thinner or equal thickness, most any elongated component has two elongated sides separated by the body of that elongated component. The applicant must note that without additional structural limitations, most any elongated connector will have "...elongated portions longitudinally extending for the length...". This may merely be the longitudinal sides (in this case being the flat top and bottoms having their dimension wider than their web, or central thickness) connected by the body. In the case of Keith, Keith teaches the cutouts which are construed as part of the webs of lesser thickness. The applicant argues that 92 is the entire connector. This is more clearly described in the response above. The applicant also argues the anchorage surface. This is a functional limitation which requires the structure to be capable of being anchored. The claim also adds a structural limitation to the anchoring surface of a notch. This is the only structural limitation with regards to a notch. Therefore, most any notch like physical characteristic, within reason, may be construed as such. The applicant states the action above refers to ends and not surfaces. These are the same. The ends of the connectors have an inherent surface, this surface is anchorable and inherently capable of transferring forces. The rejection above points to a structure construed as a notch. Regarding claim 26, the applicant also argues that the composite of Keith is not the same as the "structural composite" of the instant application. However, claim 26 does not claim structural composite. The applicant argues the intended use and function of the instant application. The applicant should note that as claimed, the prior art meets the limitations, as claimed, of the instant application. The applicant argues, regarding



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claims 27 and 32, that the lip of Keith is integral and not molded. The applicant should note that molded is a method of making. A molded component is also an integral part of the structure. Also, the applicant argues the notches 53 do not reside in the concrete layer. However, the applicant should note that the claim states the lip is for locating the connector in within the insulation layer. The claim does not positively state that the lip is in concrete, it merely states it is used to locate the connector within the wall. Regarding the obviousness rejection, the applicant argues, as noted above, about the anchoring surfaces. This is addressed above.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Basil Katcheves/

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